



**Via E-Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

June 17, 2022

Vanessa A. Countryman, Esq.  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: The Enhancement and Standardization of Climate-Related Disclosure for Investors, Release Nos. 33-11042 and 34-94478; File No. S7-10-22**

Dear Ms. Countryman:

Thank you for the opportunity to provide comments on the proposed rules. We applaud and support the ongoing efforts of the U.S. Securities and Exchange Commission (Commission or SEC) to enhance and standardize climate-related disclosures. This comment letter is being filed jointly by the Edison Electric Institute (EEI) and the American Gas Association (AGA).

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies as International Members, and hundreds of industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums. Our industry input is based on our extensive experience in making climate-related disclosures under many of the existing reporting regimes.

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 73 million customers — receive their gas from AGA members. Today, natural gas meets more than one-third of the United States' energy needs.

The electric and gas utility sector is the most capital-intensive industry in the United States. Our members raised and invested more than \$140 billion in capital expenditures in 2021 and more than \$1 trillion over the past decade to make the gas and electric energy grids smarter, cleaner, more dynamic, more flexible, and more secure; to diversify the nation's energy mix; and to

integrate new technologies that benefit both customers and the environment. Consequently, access to efficient and transparent capital markets, and ensuring that investors have the information that they need to make capital allocation decisions, are vitally important to EEI, AGA and our members. Through this investment our industry is leading the transition to the lower carbon energy economy while preserving access to affordable and reliable energy.

Across the nation, our members are leading a clean energy transformation, making significant progress to reduce greenhouse gas (GHG) emissions in our sector, while providing the backbone of the energy infrastructure of the U.S. economy, creating good-paying jobs and an equitable clean energy future.

Actions to address climate change and thereby climate-related reporting are of high importance to our investors, which is why EEI and AGA members already provide significant climate-related information to investors and are industry leaders in voluntary disclosure through our industry-pioneered, first-of-its-kind, sector-wide ESG reporting template developed with and for investors more than five years ago.

EEI and AGA recognize that the hallmark principle of U.S. securities laws is transparency that provides investors with information that is usable, consistent and comparable across registrants so that investors can make informed investment decisions. Consistent with this principle, EEI and AGA and our members support several key elements of the climate-related disclosure approach contemplated by the Commission's proposal.

However, it is vital that the Commission implement rules that are useful and informative and recognize the inherent difficulty of obtaining accurate and timely material climate-related information, particularly with respect to indirect GHG emissions across a registrant's entire value chain, and the resulting lack of comparability that these limitations necessarily produce.

Furthermore, climate disclosure requirements should provide investors with a useful, and cost-effective, level of detail that balances the value to investors of any additional information that is required to be reported with the cost of developing, gathering, validating, and reporting that information, as well as the cost of attestation. These principles underpin existing SEC disclosure regimes for other types of disclosures. The final rule should adhere to these time-tested disclosure principles and not place a higher compliance burden and risk on those registrants that are currently providing the most climate-related disclosure to investors.

### **Executive Summary**

We commend and support the Commission's efforts to enhance and standardize climate-related disclosures. As leaders in voluntary ESG climate reporting, EEI and AGA welcome the Commission's proposal as an important step forward in ensuring more complete GHG disclosure across all industries. We believe, however, that some of the most burdensome aspects of the incremental disclosure would not produce benefits that outweigh the costs and, in some cases,

would lead to investor confusion by requiring the disclosure of overwhelmingly voluminous, immaterial information.

We recommend the following changes to the proposed rule:

- The Commission should not require inclusion of Scope 3 emissions disclosures. If the Commission decides to require Scope 3 emissions disclosures, such disclosures should be required only to the extent that a registrant has set a Scope 3 emissions goal or target, and any such requirement should include, at a minimum, clearly defined boundaries on the information required to be disclosed, including reasonable boundaries on the extent of the value chain that would be relevant for purposes of Scope 3 calculations and disclosures. Registrants should be allowed to provide such information as “furnished” not “filed.”
- The requirement for audited footnotes containing “financial impact metrics” should be removed. Such information does not need to be included in an audited footnote to be valid and reliable. It is reasonable to ask registrants to provide unaudited, good-faith estimates of the aggregated information called for by proposed Item 14-02 of Regulation S-X using a traditional measurement of materiality instead of an arbitrary numeric threshold. Furthermore, terms such as “transition activities,” “severe weather events,” and “other natural conditions” need to be precisely defined.
- The requirement for an attestation report covering Scope 1 and Scope 2 emissions is not necessary to assure reliability and would add unnecessary costs. The Commission should rely on the reporting standards under existing federal and state regulatory frameworks, such as the EPA’s GHG Mandatory Reporting Rule and other already-existing reporting regimes. Also, instead of requiring attestation, the rule should rely upon the commitment of registrants to provide accurate information to investors and the *in terrorem* effect of the anti-fraud provisions of the Federal securities laws and the other already-existing reporting regimes.
- The Commission should exempt from the final rule any registrants that are consolidated subsidiaries of a parent registrant where the parent registrant’s climate-related disclosures encompass the consolidated subsidiaries. The Commission should not require a registrant to include disclosures of its share of unconsolidated affiliates and those over which it does not exercise control.
- The Commission is asking for an unprecedented level of disclosure; the liability exposure needs to be adjusted to encourage good-faith disclosures of the unique information it would require. In order to further the Commission’s intent to increase the amount of climate-related information that is disclosed, there should be no increased risk exposure for disclosure made in good faith.
- The Commission should include in the final rule an express Foreign Private Issuer (FPI) exemption. Such an exemption would allow a FPI to defer to its home country climate-change reporting protocols in its Annual Report and Accounts (ARA) in lieu of complying with the Commission’s proposed rule.
- Disclosures about governance matters should be located in the proxy statement, where other corporate governance-related information currently is already disclosed extensively. The Commission also should clarify the meaning of “expertise regarding climate-related risks” for oversight and governance of climate-related risk, as well as allow for flexibility

given the wide range of backgrounds and qualifications of individuals with climate expertise.

- The Commission should delay implementation until two fiscal years after publication of the final rule.

We believe that with these changes the new disclosure requirements would much better balance the costs and burdens imposed on registrants with investor needs, and would provide investors with more reliable, comparable, and useful climate-related information that is material for making informed investment decisions. Moreover, these changes would address the aspects of the proposed rule that appear more burdensome for registrants that currently provide the most climate-related disclosures to investors by linking disclosure requirements to registrants' progress in setting goals to address climate change. For instance, EEI and AGA members already provide significant climate-related data to investors and are industry leaders in voluntary disclosure and climate commitments.

### **The SEC Proposal is an Important Step Forward on GHG Disclosure**

EEI and AGA welcome the Commission's proposal as an important step in ensuring more complete GHG disclosure across all industries. EEI and AGA members have been leaders in GHG and other ESG disclosures, as exemplified by our development more than five years ago of the first-ever ESG reporting template for electric and gas companies. The EEI-AGA template provides a standard for members to report generation and emissions information and describe their GHG reduction goals and strategies. We pioneered this template working with investors to help ensure it provides them with the appropriate level and type of ESG and GHG information they need for decision-making. Investors, along with other stakeholders such as the Task Force on Climate-Related Financial Disclosures (TCFD)<sup>1</sup>, have praised the template as an example of how to translate TCFD guidance into a practical ESG report that provides the information investors need to assess climate risk in their investment decision-making.

One of the hallmarks of success of our template has been keeping it limited to information investors tell us is critical for their decision making. The Commission's proposal can similarly be a bellwether in climate disclosure, but to do so it is important to keep the information reported relevant to investors and germane for decision-making. We offer some suggestions below on how to ensure that the final rule requires an appropriate level of disclosure, based in part on our experiences with our template and ESG reporting.

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<sup>1</sup> For more information, see: <https://www.fsb-tcfid.org/>

## **Required Reporting of Scope 3 Emissions**

### ***Scope 3 Emissions – Introduction***

As noted in greater detail below, Scope 3 emissions are difficult to quantify and generally require estimates of a type unlike the detailed confirmable information that investors generally rely on. Nonetheless, as the GHG Protocol—on which the TCFD framework is modeled—notes, reporting of some Scope 3 emissions can help identify potential risks and spheres of influence that may be of value to investors even if the emissions data is not perfectly accurate. However, inclusion of such data, if required, should be carefully bounded to the relevant extent of the registrant’s value chain, especially given the inherent uncertainties of Scope 3 emissions data. In addition, registrants should be able to include this information as “furnished” rather than as “filed,” which would appropriately limit potential exposure for including in good faith what may be less than fully certain, but potentially helpful, information.

### ***The Commission Should Reconsider the Proposed Requirement to Report Scope 3 Emissions***

Most of our members currently report Scope 1 emissions, and most of our electric utility members also currently report Scope 2 emissions from purchased electricity and energy.<sup>2</sup> All of our members are committed to making important climate-related disclosure to their investors, and we acknowledge that some companies (including both electric and natural gas utilities) may choose to report certain categories of Scope 3 emissions in other places.

However, we believe the Commission goes too far in this proposal by requiring the inclusion of Scope 3 emissions in registrants’ filings. We urge the Commission not to include any requirement to report Scope 3 emissions. The GHG Protocol states that Scope 3 is an “optional reporting category” (Page 25, [Corporate Standard | Greenhouse Gas Protocol \(ghgprotocol.org\)](https://ghgprotocol.org)) and that “[s]ince companies have discretion over which categories they choose to report, Scope 3 may not lend itself well to comparisons across companies.”

Further, Scope 3 emissions data can only be an estimate based on available emissions reporting methodologies and capabilities. Although a variety of estimates are included within the Form 10-K, the estimates necessary in Scope 3 emissions reporting are inherently different, including a higher level of estimation uncertainty that results from (i) methodologies that are not consistent or well-developed/mature; (ii) key input data to the estimate that may not be considered reliable; and (iii) numerous, often unobservable/unverifiable assumptions and judgments necessary to the estimation. As a result, the corresponding output/estimate is highly sensitive to slight variations in these assumptions. Therefore, the estimated Scope 3 emissions disclosures likely will not be comparable, meaningful, or decision-useful to investors and other financial statement users.

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<sup>2</sup> Scope 2 emissions are typically not material for gas utilities, as they purchase only insignificant quantities of electricity. Whereas a wires-only electric utility that sells the power it delivers to customers would purchase all the electricity they provide to customers from independent power generators.

***If Scope 3 Emissions are Required to Be Reported, There Should Be Boundaries on the Information to Be Included and the Disclosures Should be Furnished Rather Than Filed***

As the GHG Protocol<sup>3</sup>—on which the proposed disclosure requirements are modeled—notes, reporting of some Scope 3 emissions can help identify potential risks and spheres of influence that may be of some value to investors even if the emissions data is not perfectly accurate. However, inclusion of such data, if required, should be carefully bounded given the inherent uncertainties of Scope 3 emissions data and the interrelated nature of today’s upstream and downstream supply chains.

Accordingly, should the Commission decide to require Scope 3 emissions disclosures, it should provide specific guidance on which Scope 3 emissions should be included, and to what extent, in order to ensure that the resulting disclosure is as useful as possible for investors. While reporting on certain categories of Scope 3 emissions could provide some helpful general information, such emissions are very difficult to quantify accurately across a registrant’s entire value chain and are unlikely to be comparable between entities due to the large amount of estimation required. Therefore, any requirement for Scope 3 emissions reporting would need to be bounded by clear parameters in order to be useful and should be furnished (rather than filed) to limit registrant liability appropriately, given the inherent limitations on the completeness and reliability of the underlying data. We address this in more detail below.

The GHG Protocol clearly contemplates a value chain that goes beyond initial customers, but it does not specify the relevant extent of the value chain for such calculations and disclosures to be useful for investors. For instance, when a utility sells electricity or natural gas to a factory, does the value chain stop at the factory, or does it continue further downstream to the users of the products manufactured at the factory?<sup>4</sup> Without logical boundaries tied to registrant’s line of business and span of control, accurate and consistent estimation of Scope 3 emissions becomes extremely difficult, if not impossible, and would result in a significant cost and resource burden on companies as well as an overwhelming amount of data and irrelevant information for investors to sift through.

To address these concerns, if it is determined Scope 3 is to be included, it would be reasonable to limit the “value chain” for Scope 3 reporting to the immediate suppliers to, and immediate

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<sup>3</sup> The GHG Protocol was originally convened in 1998 by the World Business Council on Sustainable Development (WBCSD) and the World Resources Institute (WRI). For more information, see: <https://ghgprotocol.org/about-wri-wbcsd>

<sup>4</sup> For example, if a utility provides electricity to a factory that manufactures trucks, are the emissions from those trucks included within the utility’s Scope 3 emissions? What about the emissions from the products transported by those trucks? What about emissions from the ultimate use of those products? To provide reasonably estimable, usable and relevant information for investors, none of these GHG emissions should be attributable to the utility as they are far beyond the utility’s line of business and span of control. Without such boundaries, the Scope 3 emissions required to be reported from the utility sector could be much of the U.S. economy’s emissions. This fact would only reveal that electricity and natural gas are critical to the U.S. economy, but would reveal little of use to an investor when comparing utilities.

customers of, a registrant.<sup>5</sup> In addition, while the proposed rule currently would require a registrant to calculate and disclose all Scope 3 emissions (1) if they are “material” or (2) if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions, it would be appropriate that such requirement be narrowed to the second prong only. As the Commission’s discussion and request for comments on what should be the proper measure of “material” for Scope 3 emissions highlights, whether and to what extent Scope 3 emissions are “material” to an individual registrant can be difficult to evaluate and determine on a consistent basis across various registrant types, particularly given the lack of guidance on appropriate boundaries within the value chain. Limiting the requirement for Scope 3 emissions estimates to the extent to which the individual registrant has set a GHG emissions reduction target or goal that includes Scope 3 emissions would provide a much clearer trigger and boundaries around reportable Scope 3 emissions estimates. Such estimates would then be based on the extent to which management has determined that Scope 3 emissions are relevant and significant for the registrant’s industry and operations, as well investor input on the need for Scope 3 emissions reduction targets.

The proposal also appears to require registrants who have set goals for any of the 15 categories of Scope 3 emissions to report all categories of Scope 3 emissions. However, companies that have set goals for certain Scope 3 emissions have, by definition, determined that the categories for which goals have been set are the most important and that the remainder likely are not material. Within the 15 categories, less than one-half are directly applicable to the utility and energy industries. There are a few categories of Scope 3 applicable to the utility and energy industries where data is readily available, but even here some companies may define these differently. Requiring registrants to report all categories of Scope 3 emissions would almost always require them to report immaterial information. If the Commission does not choose to (1) remove the requirement to report Scope 3 emissions or (2) limit any required Scope 3 emission disclosures as recommended, there should be an opportunity for a registrant to explain which of the 15 categories are relevant and material to their business while omitting other categories from its reports.

In addition, in light of the speculative nature of their estimation, if Scope 3 emissions disclosures are required, registrants should be able to include this information as “furnished” rather than “filed,” which would limit their potential exposure for including information of this nature and help address the numerous assumptions, uncertainties and estimates necessarily used to calculate Scope 3 emissions. We discuss these concerns in detail below.

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<sup>5</sup> For example, for an electric transmission and distribution (“T&D”) utility that does not own generation but rather purchases power on the wholesale market and then distributes it to customers, Scope 3 GHG emissions would be calculated based on the aggregated GHG emissions from fossil fuel combustion for electric generation and the aggregated total number of kilowatt hours used by customers. This would not include, for example, the GHG emissions from the production and transportation of the fossil fuel used to generate the electricity nor the GHG emissions from the sale and use of a utility customer’s end-products sold to third-parties. As set forth in the GHG Protocol framework, line losses on the T&D system from delivering the electricity the utility purchased would be reflected in the T&D utility’s Scope 2 GHG emissions estimate. Together, this level of information would fairly represent and provide useful and comparable information to investors about a T&D company’s position in the value chain.

***Scope 3 Emissions Are Inherently Difficult to Quantify with a High Degree of Accuracy or Reliability***

A key principle of financial disclosure is that the information provided must be objectively quantifiable and reliable. Scope 3 emissions are challenging to quantify with a meaningful degree of certainty since they depend on broad estimates or information supplied by third parties. This largely is because Scope 3 emissions include emissions of both upstream and downstream participants, which include individuals and both privately and publicly held companies in a registrant's "value chain" – entities over which a registrant has little, if any, control and into which a registrant may have little, if any, visibility. Even for upstream participants, such as a registrant's primary vendors, it is difficult to compel the provision of the requested metrics and to assess or influence their accuracy.

In the case of natural gas supply, only a small proportion of the natural gas obtained by gas and electric utilities is purchased through bilateral contracts where the upstream supplier is known and can be individually identified. Most of the supply is obtained from gas markets<sup>6</sup> where the suppliers cannot be individually identified, and therefore the actual sourcing of that gas and the emissions associated with it are not measurable. The GHG Protocol does not provide guidance on accounting for these upstream gas emissions.

Obtaining reliable emissions metrics from downstream participants (including millions of customers) is almost impossible for many industries, particularly utilities, since emissions from customers are neither uniform nor consistently predictable. For example, when a utility provides natural gas to a factory, it may not know the extent to which the factory will use the natural gas as a feedstock to manufacture products that will sequester rather than release carbon or methane – rather than as a fuel. The gas utility also would not know the type of fuel combustion equipment to be used at a factory or commercial facility and thus would have no insight into the resulting emissions.

Overall, the lack of consistent information on Scope 3 emissions in a registrant's value chain assures that the reported metrics will be dependent upon broad estimates rather than those characterized by the precision, rigor, and reliability that users of SEC-filed information expect. Even among our members who have attempted to quantify and disclose Scope 3 emissions, there is lack of consensus as to how to do so and whether such information is sufficiently reliable and comparable, which we discuss further below. Given the fact that Scope 3 emissions metrics are largely based upon such estimates, significant additional disclosure would be necessary in order for a financial statement user to genuinely understand the nature of the estimate and corresponding estimation uncertainty.

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<sup>6</sup> Although electric distribution utilities may generate their own electricity or purchase some of it from known sources, at least some portion is acquired from similar wholesale markets where suppliers cannot be identified individually.

### ***The Scope 3 Information Reported will not be Comparable***

Companies in similar businesses with comparable Scope 1 and Scope 2 emissions likely will report significantly different Scope 3 metrics depending upon the methodology and assumptions used by each<sup>7</sup>. Substantially all Scope 3 emissions reporting will be based upon estimates, and those estimates will vary widely depending upon broad factors such as the differences in the mix of upstream and downstream participants, the amount of emissions information, if any, provided directly by members of the value chain, the amount of emissions information, if any, more broadly made public (for example in EPA filings, Carbon Disclosure Project and Global Reporting Initiative reports, and otherwise), and the capacity of registrants to absorb and analyze the available information.<sup>8</sup>

Our members' Scope 3 emissions, and their climate performance more generally, reflect their unique facts and circumstances, including weather and energy efficiency programs, as well as each registrant's strategy with respect to decarbonization, safety, reliability, resiliency, and affordability. Further, the quality of information available from those in our members' supply chain could vary substantially and may not be subject to the same rigor as our members apply in developing their own disclosures. These differences further reduce the comparability of Scope 3 emissions data. All of this argues for additional guidance and boundaries from the Commission if Scope 3 emissions must be included, allowing the information to be "furnished" rather than "filed," and requiring information around the uncertainty of the accuracy of Scope 3 emissions estimates so that investors can determine the level of confidence to assign to such data.

### ***Inclusion of Scope 3 Emissions Will Result in Double Counting of Emissions***

The nature of Scope 3 emissions and the absence of clear boundaries for most registrants' value chains will result in the same emissions being reported by multiple registrants. One concern among our members is double-counting among gas producers, pipelines, and utilities. For example, an electric utility that uses natural gas to generate electricity will be in the same value chain as the producer that produced and supplied that natural gas and the pipeline that transported that natural gas to the utility's plant, with each possibly reporting the emissions of the other within its Scope 3 metrics<sup>9</sup>. Double-counting also can occur for a single registrant that is a gas and electric supply utility that both supplies the natural gas to a third-party generating facility and then purchases that electricity (whether directly or on the wholesale market) for distribution to electric customers. These additional considerations further illustrate that the Commission should establish clear value chain boundaries that address and eliminate these potential cases of double-counting if reporting of Scope 3 emissions is required.

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<sup>7</sup> Although the methodology used will be disclosed, it is unlikely that it will be disclosed at the level of detail that would enable reconciliation among different registrants.

<sup>8</sup> It also is noteworthy that the estimating approaches used by registrants likely will be based upon analysis of earlier data (*i.e.*, data from a year or two prior to the current year being reported upon) and therefore may no longer be entirely accurate at their time of use.

<sup>9</sup> The utility's customers – and possibly others – also would be within the same value chain, resulting in even further duplication of the reporting of the same emissions.

### ***Summary of Recommendations Regarding Scope 3 Emissions Reporting***

The Commission should not require inclusion of Scope 3 emissions disclosures. The framework for Scope 3 emissions estimations and disclosure has not yet matured to the point that registrants can provide the proposed disclosure with a level of consistency and accuracy on par with what the Commission requires generally.

If the Commission nevertheless decides to require Scope 3 emissions disclosures, the disclosure requirement should include, at a minimum, clearly defined boundaries on the information to be disclosed. Without clear bounding, the resulting disclosures will be neither comparable nor reliable. It is reasonable to limit the “value chain” for any Scope 3 emissions disclosure requirement to the immediate suppliers to, and immediate customers of, a registrant directly related to the registrant’s core business as described in its business description. Quantitative disclosures of GHG emissions should be required prospectively only, for reasons explained in our comments on the implementation date later in this letter.

In addition, any Scope 3 emission information should be considered “furnished” rather than “filed.” Registrants should not be required to “file” data that would be so largely dependent on estimations and assumptions that may be inconsistent across companies. Additionally, registrants should be afforded a “reasonable efforts” standard for Scope 3 emissions data collection similar to the “reasonable country of origin” standard used to determine countries of origin in the Commission’s conflict minerals disclosure rules.

### **Audited Footnote Requirement**

An audited footnote containing “financial impact metrics” should not be required. The preparation and inclusion of the proposed information in an audited footnote will be challenging and costly to implement, including the accounting and other changes necessary to produce the required information and the significant audit cost due to the volume of information that would be included, the unworkable disclosure threshold, the impacts on internal controls, and the lack of criteria that can be applied objectively and consistently. Further, the incremental benefit of including these requirements, compared with an alternative presentation of the information most relevant to the proposed rule’s purpose, as discussed below, is unclear.

### ***Overwhelming Volume of Information***

As a threshold matter, the information related to the eight disclosure items contained in proposed Item 14-02, particularly the information related to severe weather events, other natural conditions, and transition activities, could be interpreted to affect a substantial number of the line items in the financial statements of a utility.

To take a simple example, consider the impact of a substantial hurricane that reaches an electric utility's service territory:

- Of a utility's typical 17 income statement line items, 11 likely would be impacted by 1% or more.
- Of a utility's typical 41 statement of cash flow line items, 15 likely would be impacted by 1% or more.
- Of a utility's typical 49 balance sheet line items, 3 likely would be impacted by 1% or more<sup>10</sup>.

There are substantial hurricanes every year, so, focusing just on hurricanes as an illustrative example, the proposed rule could, depending upon the location of the utility, require the footnote disclosure to include financial impact metrics and context information for each year presented for each of the line items referenced above, potentially resulting in a footnote several times larger than the actual financial statements themselves given how much information would be needed with respect to each line item.

While the example above relates to hurricanes, the impact of other severe weather events—such as tornadoes, floods, wildfires, heat waves and unusual freeze conditions—similarly would impact numerous line items as well. And the required disclosure relating to severe weather events is only one of the eight required disclosure topics under proposed Item 14-02.

The information at this level of detail would not be beneficial to investors, as most of it would be immaterial and, given how unique each utility is<sup>11</sup>, would lack any meaningful comparability to similar information provided by other registrants. Investors currently get information today that is meaningful in this arena through the existing requirements in Regulations S-K and S-X, e.g., requirements for Management's Discussion and Analysis (MD&A) discussion of significant items within the year, and, to the extent severe weather impacts are relevant/material, those are discussed there.

Any nominal benefits from the proposed disclosure would be far outweighed by the cost of preparation for registrants and increased burden on investors to interpret voluminous data. Furthermore, the unintended consequence of this rule would be that so much immaterial information would be added to the audited financials that investors will not be able to differentiate material from immaterial information in assessing the financial status of the registrant.

Our experience in working with investors and other stakeholders in developing the EEI/AGA ESG/Sustainability Template is that investors seek brevity and clarity in the disclosure of

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<sup>10</sup> These numbers are based upon a sampling of Atlantic-coast and Gulf-coast fronting utilities and do not include sub-total (and total) lines items and capital-related line items.

<sup>11</sup> Substantially all of the SEC-registered utilities with electric operations are members of EEI, and substantially all of the SEC-registered utilities with natural gas operations are members of AGA. Each has a different geographic territory with different populations, climates, natural resources, customer demand, state regulatory regimes, history, and existing facilities. Comparability is limited.

material information. They are unlikely to benefit from a voluminous report; instead, they want concise, comparable, and consistent disclosures. The success of our template reflects our industry’s responsiveness to this input, and we recommend a similar approach here.

***The 1% Threshold Is Not Consistent With Most Definitions of Materiality***

A 1% threshold for disclosure on a line-item by line-item basis would change the traditional definition of materiality. The approach embodied in proposed Item 14-02 is inconsistent with the Commission’s long-standing approach to materiality, as reflected in its pronouncements—such as SAB 99—its disclosure rules generally, and its enforcement efforts, as well as that endorsed by the Supreme Court in *TSC vs. Northway* and *Basic vs. Levinson*. Disclosure of a large volume of immaterial information harms, rather than helps, investor decisions by creating information overload that obscures truly material items.

The 1% threshold contained in Item 14-02(b) requires that components within each line item be aggregated to determine whether the “positive impacts” and “negative impacts” exceed 1% of the total line item. It is rare that components that comprise as little as 1% of a financial statement line item will be material. Moreover, given the wide range of size for different line items, one percent of even the largest line item still may not be material, and one percent of smaller line items likely are meaninglessly insignificant amounts.

The 1% threshold is immaterial and arbitrary and would impose undue costs and burdens on public companies. While we do not subscribe to there being a single numeric threshold for materiality, there clearly is a level below which items simply are not material to investors. One percent has not been the threshold for quantitative financial statement line-item materiality, especially since any particular line item itself might not be material for a given registrant. This prescriptive approach is also inconsistent with the principles-based TCFD reporting framework, which was cited by the Commission as one of the frameworks used to develop the proposed rule.

Moreover, registrants would have extreme difficulty implementing the aggregation requirement underlying the proposed 1% threshold. There is no minimum amount with respect to the individual components that would have to be aggregated, meaning that even the smallest underlying components would have to be identified as being attendant to positive or negative impacts and, as a practical matter so that the disclosure can be meaningful, further identified in a manner so that they can be aggregated with similar underlying items. For even a modest-sized utility, this would require that these identifications be performed for millions of individual items every year.

Further, utilities do not have a chart of accounts that is designed to make these differentiations, nor have they ever been expected or required to do so for items that are clearly immaterial. The same is likely true of virtually all registrants. In addition, many utilities do not have systems at a central office, at warehouses, at dispatch centers, for line crews, or otherwise that currently enable them to identify a particular piece of equipment or service as being attributable to a “severe weather event” or a “transition activity.” A system that would enable that level of tracking would be extremely costly to implement and maintain, and it would be several years, at

best, before it could reliably produce auditable results. Additionally, such a system would include a number of estimates and assumptions that would pose significant liability concerns and audit challenges.

If the footnote requirement is contained in the final rule, the 1% threshold should be replaced with a traditional materiality concept that is based on financial statement materiality as opposed to focusing on individual line items. Given the difficulty of a one-size-fits-all definition of materiality, the traditional *TSC vs. Northway* and *Basic vs. Levinson* approach should be used. This approach has passed the test of time and provides the needed flexibility while ensuring that investors receive relevant information.

### ***Internal Controls***

Utilities, like all other registrants, are required to maintain a system of internal controls designed to provide reasonable assurance that the information in their financial statements is materially correct. For a utility, these systems of controls often involve hundreds of individual controls reflected in thousands of pages of detailed processes and procedures. These controls uniformly have been designed around materiality thresholds established relative to the nature of the controls and the size of the business consistent with the longstanding approach to materiality discussed above.

Rebuilding a utility's system of internal controls to support the proposed footnote disclosure would require a comprehensive update of its internal controls and the imposition of new processes and procedures, including significant IT system modifications, at an extremely high cost that far exceeds any potential benefit to investors. This would be a several year process, and even then, it may not be possible to implement a system of internal controls capable of providing assurance for disclosures under the 1% threshold mandated by the proposed footnote requirement, even at the substantial cost that would be required to attempt to do so.

### ***The Categories “Severe Weather Event” or “Other Natural Condition” are Unworkable***

The proposed rule does not define “severe weather event” or “other natural conditions” or how such events and conditions may be related to anthropogenic climate change. Instead, it simply provides examples, and those examples do not provide actionable guidance<sup>12</sup>. Additionally, the proposed rules, at times, appear to include all “severe weather events” as “climate-related events” without explaining which weather events necessarily stem from climate change and, as such, must be accounted for when preparing consolidated financial statements. It can reasonably be argued that a definition for a “severe weather event” could not be appropriately included in the regulation because there is no single definition that would be broadly applicable. Consequently, it is an inappropriate standard for information that is required to be audited.

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<sup>12</sup> In particular, the proposed rule provides as examples flooding, drought, wildfires, extreme temperatures and sea level rise.

There is no question that events, such as the examples provided by the Commission, can be “severe weather events,” but when and to what extent are they to be considered “severe,” and when should they be assumed to be related to climate change? Does traditional materiality analysis, *i.e.*, *TSC Industries, Inc. v. Northway, Inc.* and *Basic, Inc. v. Levinson*, apply to differentiate between an “ordinary weather event” and a “severe weather event” caused by climate change? Does comparison to other similar events define “severity”? For example, are Category 5 hurricanes “severe weather events,” but not Category 1 hurricanes? There have always been hurricanes – which ones are to be assumed to be related to climate change? In addition, the severity of a weather event often will not be known until after-the-fact, requiring that accurately recording real-time accounting entries will necessitate a level of prescience as to whether the event ultimately will be determined to be “severe.”<sup>13</sup>

Is the entire cost of a “severe” event considered climate-related, or only the incremental cost above some “average” or “normal” level? And what methodologies would be employed to determine such levels? Does the number of events in a particular year matter? For example, are named hurricanes in excess of 14 per year – an accepted annual average for named hurricanes– “severe weather events” related to climate change but not the named hurricanes occurring prior to reaching that average? If there are more than an average number of hurricanes in a year, but they all are modest in size, would any of them be “severe weather events” related to climate change? And, while hurricanes are used as an example, the same questions apply to the other examples included in the rule proposal. For example, would the flooding of a river that has flooded virtually every spring for the past hundred years be considered a “severe weather event” related to climate change?

The phrase “other natural conditions” raises similar issues. Since some natural conditions likely will be static or change only slowly over time, it might be more likely that a usable consensus would evolve in due course, particularly since the primary use of the concept appears to be to assess proximity to rising water levels. Even here, though, the same concern remains as to what threshold determines whether and to what extent the effect of other natural conditions is “severe” (and related to climate change) to a large enough extent to warrant disclosure.

Further, even if there were an understandable and agreed-upon definition of these terms, the occurrence of such events does not necessarily correlate with a severe or even material financial impact. The impact of an event depends not only on the severity of the event but also the response of the registrant.

Finally, the ambiguity of both “severe weather events” and “other natural conditions” would open registrants to litigation both from those who may believe enough events or conditions aren’t

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<sup>13</sup> Given the millions of accounting entries that would be relevant, it would be impractical to subsequently review and categorize each of them. The determinations are going to have to be made at the time of the initial transaction, and those determinations may or may not prove correct based on whatever parameter the registrant adopts for defining “severe,” which likely will require hindsight. For example, would the removal of a utility pole from inventory and its installation prior to a subsequent heat wave be considered “severe” or simply a routine activity? Thus, it may literally be impossible to make the categorization that the proposed rule would require.

being reported as well as those who may believe that too many events or conditions are being reported, depending on their specific interpretation of these nebulous criteria.

### ***When is an Activity a Transition Activity?***

The proposed rule does not provide any guidance as to how activities that serve more than one purpose should be categorized. Should the cost be pro-rated relative to the more significant benefits expected? Does the primary purpose of the activity control the classification? Can *de minimis* and smaller benefits, which may be harder to quantify, be ignored? If an activity is “primarily” attributable to a “transition activity,” should it then be included, but not others? More broadly, as our members develop and execute comprehensive plans to improve grid resilience while driving toward net-zero emissions, such activities represent normal ongoing operations in an increasingly carbon-free world.

While some activities are more clearly “transition activities,” many do not lend themselves to ready categorization. Here are some examples:

- Over the last five years, many electric utilities have elected to retire existing coal-fired generating facilities and replace those facilities with natural gas-fired generating facilities. While these actions had the benefit of reducing GHG emissions, they also have other commercial motivations and have resulted in a reduction in costs to customers.
- The cost of undergrounding power lines is sufficiently high that electric utilities generally do not do it primarily for climate-related reasons but rather for customer-service related reasons, even though in some instances there may be climate-related ancillary benefits. Similarly, a reduction in line losses or pipeline leaks is often the result of asset replacements and other improvements for the primary purpose of improving reliability, resiliency or safety with GHG reductions being an important but secondary benefit.
- The first commercial nuclear plant in the U.S. was commissioned in 1958, and neither it nor most, if not all, of the existing nuclear plant fleet likely was built to reduce GHGs. In the future, a utility may construct a small modular nuclear generating unit to replace an existing natural gas-fired plant to address a portion of its generating needs. While the inclusion of nuclear generation will result in greater GHG reductions, the utility’s motivation for including nuclear generation may be the benefits of fuel diversity or cost.
- Electric transmission and distribution utilities regularly replace or upgrade equipment and technology to increase resilience. There are climate-related reasons for these investments, such as preparing or hardening the system for increased weather events; making the grid more flexible for a renewable-heavy clean energy future; or preparing for a low-carbon economy marked by the electrification of transportation. But there are also non-climate-related reasons for these investments, such as general customer reliability.
- Since 1990, natural gas utilities have replaced over 116 thousand miles of pipeline with modern near zero emitting polyethylene (PE) and cathodically protected coated steel pipe, and have also upgraded their metering and regulating stations. While these modernization projects also resulted in an estimated 69 percent reduction in methane

emissions from U.S. gas distribution between 1990 and 2020, according to EPA<sup>14</sup>, they were approved by state utility commissions primarily to improve the safety and reliability of the gas delivery system.

In each of these examples, there was a business reason in addition to GHG mitigation to make capital investments. The proposed rule is ambiguous with respect to the categorization of these and similar activities as “transition activities.” We believe that “transition activities” should be limited to (a) activities with respect to which reducing GHG emissions is a significant purpose, (b) activities that materially reduce GHG emissions, or (c) activities that are driven by regulatory-required GHG emissions reductions, and registrants should have some level of discretion as to which activities meet those definitions.

### ***Audit Requirement***

Information does not need to be included in an audited footnote to be valid and reliable. Registrants routinely include substantial amounts of required disclosure information in filings with the Commission that are not audited and for which the absence of an assurance opinion has not been a problem. Rather, the Commission should rely on the commitment of registrants to provide materially accurate information to investors and the *in terrorem* effect of the anti-fraud provisions of the Federal securities laws.

The rule proposal estimates that, on a six-year average, the average annual assurance cost for the audited footnote disclosure is \$15,000 and that producing the information would take 64 hours. As noted in these comments, the extent of the work necessary in implementing this aspect of the proposed rule would entail much higher costs and require thousands of hours of additional incremental work that exceed the proposal’s estimates by orders of magnitude.

The gap between the Commission’s estimates and the estimates of those responsible for producing the results that the Commission has proposed is striking. Based on our industry’s experience, as well as preliminary discussions with our auditors, the costs in incremental expenditures and work hours could be several times higher than the Commission’s estimate. Furthermore, the ongoing compliance costs of sustaining this disclosure would be significantly more than the proposed rule estimates. Such costs would ultimately be passed onto customers in the utility industry and to energy consumers more broadly.

### ***Summary of Recommendations Regarding Audited Footnote Requirements***

It is reasonable to ask registrants to provide unaudited, good-faith estimates of the aggregated information called for by proposed Item 14-02 using a traditional measurement of materiality instead of mandating an arbitrary numeric threshold. The information could be provided in the same location as the Item 1500 *et seq.* information or in a schedule. It is not reasonable, however, to require either inclusion of this information in an audited footnote or a level of detail

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<sup>14</sup> See EPA, *Inventory of U.S. GHG Emissions and Sinks*, April 2022

in any such disclosures that is far more granular than what investors or registrants would consider material in accordance with law and historic practice.

Rather than imposing an untested definition of “severe weather event,” the Commission should base the disclosure on “unusual climate-related events” with material impacts to the registrant's business and initially should allow registrants to define what they consider typical climate events for the geographical areas where they operate and to provide good-faith estimates of the material financial impacts that they attribute to climate-related events that they consider unusual. This could include sector-specific approaches such as our industry’s ESG/Sustainability template that has been so very successful.

Further, "transition activities" should be limited to (a) activities with respect to which reducing GHG emissions is a significant purpose, (b) activities that materially reduce GHG emissions, or (c) activities that are driven by regulatory-required GHG emissions reductions. The Commission should not require disclosure by line item or disclosure of immaterial impacts. The Commission should also encourage registrants to work with their trade associations and others to develop common standards for their respective industries, a process that we believe would generate significant comparability within a relatively short period of time, further benefiting users of the financial statements.

### **Attestation of Scope 1 and Scope 2 Emissions**

The requirement for an attestation report covering Scope 1 and Scope 2 emissions is not necessary to assure reliability for the same reasons described above when addressing the proposed requirement to audit amounts to be included in notes to the financial statements, as well as the additional considerations regarding emissions reporting described below. There is no evidence that registrants are not reporting or will not report their emissions as accurately as possible or that attestations by third parties would improve the quality of the published measures. If an attestation requirement is included in the final rule, it should require no more than “limited assurance,” not “reasonable assurance,” in light of the factors we discuss below.

#### ***Current Reporting Practices are Reliable***

Today, the largest registrants with meaningful GHG emissions from fixed sources report those emissions in some form to the EPA<sup>15</sup> as well as to other federal and state regulatory bodies. EEI and AGA members are subject to GHG air emissions reporting, generally to the EPA, but also in some instances to state regulators as part of their integrated resource planning processes or otherwise. Those reporting metrics may be measured differently than Scopes 1, 2, and 3.

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<sup>15</sup> Reporting to the EPA under the Mandatory Greenhouse Gas Reporting Rule (40 C.F.R. Part 98) has been required since 2010. For reporting year 2020, over 8,000 facilities and suppliers reported approximately 85 to 90 percent of the country’s GHG emissions. See <https://www.epa.gov/ghgreporting/ghgrp-reported-data>.

AGA member natural gas utilities, for example, submit annual reports on their methane emissions and CO<sub>2</sub> combustion emissions for the previous calendar year by March 31 of each year under Subpart W of the GHG Reporting Rules, and EPA reviews that data before posting the company-specific gas utility emissions reports on the EPA website the following October. Similarly, EPA reviews and posts the GHG emission reports submitted by electric utilities under the GHG Reporting Rules.<sup>16</sup>

EI members report the majority of their GHG emissions - which are predominantly CO<sub>2</sub> emissions from fuel combustion from fossil-fired generation - to the EPA using continuous emissions monitoring systems located at each facility, and AGA members report their GHG emissions to EPA from direct emission surveys, metered throughput, competent counts and emission factors based on peer-reviewed scientific studies as required by EPA's GHG Reporting Rule (GHGRR). Both of these types of reports to EPA are required under the Clean Air Act and are subject to the Act's civil and/or criminal penalty provisions under section 113. EPA's GHGRR is often referred to as the "gold standard" of emissions reporting programs. In addition, EI members file fuel use forms with the Energy Information Administration (EIA), and AGA members file gas supply data using EIA Form 176 "Annual Report of Gas Operations." EIA uses the data filed with EPA to calculate the national emissions inventory for the United States. It does not seem reasonable to require additional expense to attest or verify information that is already required and vetted by the federal government. In addition, if reporting is required by the Commission, registrants will be subject to the additional *in terrorem* effect of the anti-fraud provisions of the Federal securities laws. As noted, the current quality of the published information also reflects the commitment by registrants and others to report information accurately.

Furthermore, most of the largest registrants voluntarily produce annual reports on emissions that are publicly available on their websites or elsewhere. The result is that substantially all of our members' emissions are already reported to Federal and/or state regulatory bodies with specific expertise in those matters and are readily available publicly.

### ***Cost of Attestation***

We interviewed several chief accounting officers from our utility members. They estimated the cost of obtaining the proposed annual attestations would be substantially more than the Commission's estimated six-year annual cost of \$52,000. We are particularly concerned that this cost would have an outsized impact on smaller utility companies. In large part we believe that this difference reflects the Commission's underestimation of how many different metrics must be combined in reporting Scope 1 and Scope 2 emissions and how much complex work will be necessary to validate that information consistent with normal attestation practices.

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<sup>16</sup> See EPA's GHG Reporting Program, <https://www.epa.gov/ghgreporting>.

### ***Timing and Scarcity of Resources***

The timing of the proposed attestation requirement is unattainable. We acknowledge that, as discussed on page 48 of the proposed rule, data for the fourth quarter of the year could be estimated for the Form 10-K (with any material differences in the Q4 data being noted in the first Form 10-Q of the year). While we appreciate this concession, we believe it may be confusing to investors, unnecessarily more costly to registrants, and likely to lead to increased litigation exposure to include such estimates of these metrics in the Form 10-K.

Currently, annual reporting to the EPA is due on March 31<sup>st</sup> of each year. In order to file the reports, the information has to be gathered, reviewed, and assembled. It can be challenging to complete this process by the March 31<sup>st</sup> deadline. Moreover, the annual emissions data is not finalized with EPA until October.<sup>17</sup> The Commission's proposed rule contemplates that not only will this process need to be completed but that the information also will be attested by an even earlier deadline, almost always the end of February for most EEI and AGA members.

The Commission's proposed rule also contemplates numerous additional emissions-related data and metric disclosure requirements that far exceed what most of our member companies currently file with the EPA today. A registrant's ability to add these new emission metric disclosures to existing Form 10-K processes will be challenging, and for some emission metrics may not be possible as they are gathered from third parties. If any information or data is required from third parties in order for a registrant to calculate emission metrics, it may not be readily available nor certified as reliable or attested data by the third party in time for it to be included within a registrant's own internal Form 10-K processes.

Rushing the collection, processing, review, and disclosure of these metrics could result in emission metrics that may need to be revised later in the year as third parties verify and publicly attest to their own emission metrics. It is not reasonable or practical for registrants to rely on unverified sources of data from third parties in order to quickly calculate their emission metrics in line with the Commission's proposed rule and annual compliance dates.

While we can imagine registrants accelerating their gathering, review and assembling process (albeit at significant cost), it would be virtually impossible to compress that process into five or six weeks so that there would be time for the attestation process, particularly during the year-end audit when many of the needed resources will have other obligations as well. And changing the fiscal year for the required information - *e.g.*, such as is common for pension plan data that is not as hard to gather, analyze and assemble - would not be a solution as registrants still would be required to produce data based upon a calendar year-end for EPA and other purposes, thereby creating two different sets of data that would not be comparable.

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<sup>17</sup> The most recent emissions data available currently on the EPA website is for 2020 emissions, reported in March 2021 and posted in October 2021. See <https://www.epa.gov/ghgreporting/find-and-use-ghgrp-data>.

### ***De Minimis Exemption for Scope 1 and 2 Emissions***

Unlike current emissions reporting programs including the GHG Protocol and The Climate Registry's Reporting Protocol, the proposed rule does not contemplate an exemption of *de minimis* emissions for Scope 1 and 2 emissions. For example, the GHG Protocol identifies *de minimis* emissions as "a permissible quantity of emissions that a company can leave out of its inventory."<sup>18</sup> The Climate Registry's General Reporting Protocol describes miniscule (i.e., *de minimis*) sources as "very small sources of emissions that represent a high reporting burden, such as hand-held fire extinguishers, refrigerant in office water coolers, or CO<sub>2</sub> from soda fountains."<sup>19</sup> Even for those members who currently report Scope 1 and Scope 2 emissions, most members are not including emissions from *de minimis* sources. Collecting and reporting *de minimis* direct emissions is overly burdensome and would provide little value to investors.

### ***Recommendations Regarding Attestation of Scope 1 and 2 Emissions***

The final rule should not require attestation of Scope 1 and 2 emissions disclosures. Instead, the Commission should rely on the reporting standards under existing federal and state regulatory frameworks such as the EPA's GHG reporting rule, other already-existing reporting regimes, the commitment of registrants to provide accurate information to investors and the *in terrorem* effect of the anti-fraud provisions of the Federal securities laws and the other already-existing reporting regimes. There is nothing particularly unique about the proposed Scope 1 and Scope 2 disclosures as compared to numerous existing disclosures on other topics that would justify imposing an attestation requirement. Reporting such information should not be required any earlier than already mandated by EPA and should not be subject to any stricter requirements for attestation than already are required.

As a more reasonable and achievable alternative, the Commission could consider adopting an annual emissions-related schedule filing, compiled on a time schedule more consistent with the normal gathering of such data. Such a schedule, which could be filed on an updated version of Form SD, would separate the emissions metric reporting from the 10-K process. Reporting of emissions metrics would benefit from having more time to collect and verify third party data, staggering the review of the metrics and removal from the already compressed Form 10-K process, and ultimately produce a standalone, and more usable, GHG filing, rather than embedding it within the Form 10-K. Another potential solution would be to make the relevant GHG reporting period for SEC filings match the *prior year's* EPA reporting period so that it can rely on data that has already been fully gathered, filed and verified.

In addition, the Commission should allow issuers to exclude *de minimis* Scope 1 and 2 emissions sources from any climate disclosure reporting requirements ultimately adopted by the Commission.

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<sup>18</sup> The Greenhouse Gas Protocol, [A Corporate Accounting and Reporting Standard](#) (Revised Edition) at 70.

<sup>19</sup> The Climate Registry, [General Reporting Protocol Version 3.0](#) (May 2019) at B-7.

### **Burdensome and Immaterial Information Required on Risk and Scenario Planning**

The proposal includes numerous risk-related disclosure requirements that should be limited based on materiality, at a minimum, if included at all. For example, requiring disclosure of the location of assets at risk due to climate change-related impacts is impractical, burdensome, and would result in reams of immaterial data for companies that have electric transmission and distribution (T&D) and/or natural gas pipeline systems. Similarly, other proposals that should be eliminated or limited to financially material items include proposed Item 1506 of Regulation S-K regarding disclosure and tracking against targets, goals and regulatory requirements; operational boundaries and locations of assets or operations by zip codes; scenario analysis and the potential for disclosure of confidential and/or competitive information; and overall risk management process disclosure, which already is extensive.

With regard to disclosure of location information, the proposal suggests this would help investors identify physical risk; however, a source's GHG emissions have no relationship to local physical risk as its emissions do not directly correlate with physical risk at the site of the emissions. Furthermore, this proposed disclosure would be very difficult and even impossible, especially for non-stationary assets (i.e., mobile vehicles), overly burdensome, and result in potentially hundreds of thousands of reported data points (i.e., individual T&D emissions sources) in the filing that do not add value for investors. Additionally, material properties are already disclosed by location in the properties section of Form 10-K.

And "transition risks" are defined by the Commission to include a multitude of potential impacts that would require speculative (and perhaps business confidential) disclosures, like "reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts, etc." (See definition in proposed Regulation S-K Item 1500(a)(4).)

### **Duplication of Effort by Parents and Subsidiaries**

A number of registrants, particularly utilities, but also financial institutions and others, have subsidiaries that also are registrants as a result of having outstanding debt, preferred stock and other securities. The proposed rule would require that the parent entity and each of the subsidiaries provide the additional climate-related information, attestations in certain instances, and audited footnote. Because the parent's information would include all of the subsidiaries' information, the information filed would be substantially duplicative.

Similarly, the proposal would require registrants to include their proportionate share of emissions amounts for unconsolidated affiliates over which they do not exercise control. This again would result in duplicative disclosures to the extent that those affiliates are registrants subject to the same requirement. If they are not registrants, it is likely that the same issues identified earlier with obtaining reliable, consistent, and timely disclosure information from customers and suppliers would pertain here as well.

This duplication of disclosures would add significant cost without meaningful informational or other benefit. Accordingly, the Commission should exempt from the new requirement registrants that are consolidated subsidiaries of a parent registrant when the parent registrant's climate-related disclosures encompass the consolidated subsidiaries. Additionally, the Commission should not require a registrant to include disclosures of its share of the emissions of unconsolidated affiliates and those over which it does not exercise control.

### ***Summary of Recommendations Regarding Duplication of Effort***

Wholly owned subsidiaries of parent companies that qualify for the Commission's Form 10-K/10-Q reduced disclosure format as outlined in General Instruction (H)(1)(a) and (b) of Form 10-Q and General Instruction (I)(1)(a) and (b) of Form 10-K should be exempted from providing the additional climate-related disclosures as long as the parent company is doing so. This approach would be consistent with an established Commission framework that was specifically designed to provide a similar type of disclosure relief for other Form 10-K/10-Q disclosure requirements as long as those requirements were being fulfilled at the parent company level.<sup>20</sup> Additionally, registrants should not be required to disclose their share of the emissions of affiliates over which they do not exercise control.

### **Recommendations to Reduce Unnecessary Exposure to Liability**

The Commission may be underestimating the increased exposure to liability that registrants will face as a result of inclusion of the additional information in Commission filings due to the high level of subjectivity and extensive use of estimates inherent in the proposed disclosures, as we have documented throughout this letter. Moreover, the consequences of being wrong could be severe, particularly where a registrant has an active 1933 Act registration statement that incorporates its Forms 10-K by reference and elevates any liability from liability based upon Rule 10b-5 (and similar provisions) to liability based upon Sections 11 and 12.

As a result, we suggest that the Commission provide that any information ultimately required under Items 1500 to 1506 be deemed "furnished" rather than "filed" for liability purposes. This approach has passed the test of time in other contexts, is appropriate in this context as well, and could result in more disclosure, given that submitting this information as "filed" may discourage and limit disclosure given the incremental risk of legal liability.

Moreover, we believe that the Commission should expand the safe harbor proposed in Item 1504(f) so that it both (a) covers any statement made in response to subpart 1500, not just

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<sup>20</sup> A registrant that is a direct or indirect wholly-owned subsidiary of another registrant, and meets certain other conditions (as outlined in General Instruction I to Form 10-K), is entitled to relief from certain disclosure requirements. Such registrants may omit the information required by Item 7, MD&A if they instead provide a narrative analysis of the results of operations that meets certain requirements. These entities are also entitled to omit certain governance information and to limit the information provided in Item 1, Business, and Item 2, Properties.

statements made with respect to Scope 3 emissions, and (b) provides a presumption that an estimate made in “good faith” satisfies the “reasonable basis” condition.

In the absence of these critical changes to the Commission’s proposal, electric utilities in particular may be uniquely exposed to liability associated with generation resource planning information that would likely need to be reported in connection with proposed Item 1506 (e.g., “[h]ow the registrant intends to meet its climate-related targets or goals”). Electric utilities operating in vertically integrated markets typically must report to their state utility regulator their plans for how the utility’s mix of generation resources will reliably serve customer electricity demand into the future.

Such planning is intended to be directional only and looks many years into the future, for instance 10 to 15 to 20 years in some cases, but is not intended to be a concrete plan of action for future electric utility resource decisions. Accordingly, in many cases electric utilities prepare resource plans that feature multiple scenarios, and actual operations often deviate from such plans. Without a more comprehensive safe harbor—one that would cover Item 1506 and other disclosures proposed under subpart 1500—pulling these directional resource plans into the realm of Commission climate disclosure exposes electric utilities to extensive, previously unheard-of liability potentially associated with deviations from plans to achieve climate goals or targets.

While the Private Securities Litigation Reform Act of 1995 (PSLRA) safe harbor should cover most forward-looking statements, it is not available to registrants that recently have resolved certain enforcement matters with the Commission. There remains substantial debate in the case law as to what “identify” means in the context of the safe harbor’s conditions, and it is unclear what “reasonably cautionary language” would mean in the context of climate-related information. In addition, while “reasonable basis” is an attractive standard, it does not fully recognize the number and complexities of the estimations (probably thousands for a large registrant) that will need to be made for even reporting Scope 1 and Scope 2 emissions, as well as many of the qualitative and forward-looking climate-related disclosures that have been proposed.

### ***Recommendations***

The final rule needs to provide necessary liability protections in order to encourage good-faith disclosures of the unique information it is requiring. In order to further the Commission’s intent to increase the amount of climate-related information that is disclosed, there should be no increased risk exposure for disclosure made in good faith. The Commission is asking for an unprecedented level of disclosure; the liability exposure needs to be adjusted to reflect that as recommended above. Of course, the Commission always can enforce its rules as it deems appropriate, and ample investor protections would exist.

### **Exemption for Foreign Private Issuers**

Several of our members are FPIs. Under many Commission reporting rules and regulations applicable to US companies, FPIs are granted specific exemptions from complying with US disclosure obligations and may defer to and comply with their home country rules. Moreover, many FPIs (such as those based in the European Union and United Kingdom) already are required to disclose climate-related information in their home jurisdictions. Here, the Commission's proposed rule would require such FPIs to go beyond their home country's requirements in order to satisfy their US disclosure requirements.

#### ***Summary of Recommendations***

The final rule should include an express FPI exemption. Such an exemption would allow a FPI to defer to its home country's climate change reporting protocols in its Annual Report and Accounts (ARA) rather than complying with the Commission's proposed rule. The FPI exemption would eliminate the additional costs, expenses and reporting burdens associated with dual-country climate reporting which would more likely than not contribute to more investor confusion when comparing disclosure of US and non-U.S. company climate change reporting.

### **Governance Disclosures**

We disagree with the location and content of the governance disclosures in the proposed rule. While investors may be interested in climate-related governance, and these matters are a subject of focused attention for our members' Boards of Directors and management, any disclosure about governance matters should be located in proxy statements, where other corporate governance-related information currently is already disclosed extensively.

Similarly, the proposal is far too granular in its focus on the qualifications and experience of directors. Requiring detailed information about individuals' experience and a registrant's procedures is micro-management. A rule that is interpreted to focus narrowly on scientific and technical expertise in climate matters may come at the expense of ensuring boards retain the strategic and other diverse experience that is critical to effective governance. Further, with regard to entity-specific climate-related matters, specific modeling or risk management information could be competitively sensitive and reveal confidential information that would be detrimental to the very entities that are acting in good faith to limit emissions.

#### ***Summary of Recommendations Regarding Governance Disclosures***

For governance disclosure requirements included in the final rule, we believe the Commission should clarify the meaning of "expertise regarding climate-related risks," including through the provision of a non-exclusive list of skills, experiences and qualifications that would be deemed to reflect climate expertise, similar to the Commission's approach to the definition of an "audit committee financial expert." This list should reflect a recognition that expertise in climate-related risks does not require scientific, governmental or academic experience or training specific

to environmental or climate matters. For example, senior executive experience directly or indirectly overseeing utility or other manufacturing operations and the attendant environmental regulations, compliance requirements, and long-term planning inherent in such operations should be considered to constitute the expertise contemplated by the rule.

### **Implementation Date Should be Delayed**

In light of the issues discussed above, it is unlikely that the implementation schedule reflected in the proposed rule can reasonably be met by most registrants. The proposal appears to assume that most registrants are aligned with the TCFD recommendations and the GHG Protocol and therefore the reporting burden created by the proposed rule would be minimized. However, not all registrants are aligned with TCFD. They would have to begin gathering data even before the Commission publishes the final rule, and it is highly unlikely that information for earlier years will be reasonably available. This timing means registrants would have to “guess” about the language yet to be published in a final rule, likely leading to a waste of resources and expenditures that may turn out to be unnecessary. The utility industry is rate-regulated, and these compliance costs would become part of the utility’s cost of service and part of base rates that likely would be borne by energy customers across the nation.

Moreover, as discussed above, many, if not all, registrants will need to implement changes to their charts of accounts, update their internal controls over financial reporting and disclosure controls, implement systems for capturing the necessary information, and develop the necessary skills needed to analyze the information and accurately produce the metrics that the Commission requires. These are enormously costly and time-consuming tasks, and, if required to be completed on an accelerated basis, will result in additional, unnecessary costs as the resources for implementation are limited.<sup>21</sup> This is especially true for smaller companies. For comparison, the implementation of the FASB’s lease accounting rules required herculean efforts over years to develop and implement systems to capture the necessary information for financial reporting.

### ***Summary of Recommendations Regarding Implementation Dates***

We recommend that the Commission delay implementation of the final rule until two fiscal years after publication of the final rule. We recommend that all quantitative disclosures be required only on a prospective basis (that is, for the year of implementation and subsequent years only and not on a comparable basis for prior years for which the necessary detail and internal controls either did not exist or would not be able to be recreated).

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<sup>21</sup> In addition, EPA recently proposed changes to the GHG Reporting Rules for reporting year 2023. Companies will concurrently be dealing with adjusting data collection, calculation methodologies, and reporting documentation to address those EPA rule changes as well as for the SEC reporting changes, compounding resource constraints.

### Conclusion

We commend the Commission for its efforts to enhance climate-related disclosure and appreciate the opportunity to comment on the proposals. We believe, however, that some of the most burdensome aspects of the incremental disclosure would not produce benefits that outweigh the costs and, in some cases, would lead to investor confusion by requiring the disclosure of overwhelmingly voluminous, immaterial information.

As a result, the Commission should adjust the disclosure, audit and attestation requirements as discussed above. Additionally, the Commission should delay the effective date as we have recommended to provide sufficient time to implement any of the final rule's provisions accurately and assure adequate liability protections commensurate with the nature of the new disclosures. Finally, the final rule should only require prospective disclosures covering periods for which the necessary processes and controls have been able to be designed and implemented. With these changes the new disclosure requirements will better balance the burden that they impose with the benefits of providing investors with more reliable, comparable, and useful information for making informed investment decisions.

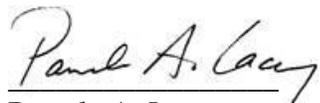
EEI and AGA would be happy to discuss any questions on our recommendations at the Commission's convenience.

Respectfully submitted,



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Pamela A. Lacey  
Chief Regulatory Counsel  
American Gas Association

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